

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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SOFYA SARAH MCCARTHY,

Plaintiff,

-against-

ORDER

21-CV-2037 (RPK) (LB)

NEFESH ACADEMY,

Defendant.

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RACHEL P. KOVNER, United States District Judge:

Pro se plaintiff Sofya Sarah McCarthy filed this action against Nefesh Academy. *See* Compl. at 2 (Dkt. #1). Her complaint alleges that she was “deprived of an education” when she “made attempts to attend college,” but her “applications were never sen[t].” *Id.* at 4. She states that school officials asked her to “reconsider [college] and get marr[ied] instead.” *Ibid.* She also alleges that school officials suspended her sister from school for two weeks “because the school said she was lesbian.” *Ibid.*

Plaintiff’s complaint is dismissed for lack of subject-matter jurisdiction. A district court has “an independent obligation to determine whether subject matter jurisdiction exists, even in the absence of a challenge from any party.” *Arbaugh v. Y & H Corp.*, 546 U.S. 500, 514 (2006) (citing *Ruhrgas AG v. Marathon Oil Co.*, 526 U.S. 574, 583 (1999)); *see* Fed. R. Civ. P. 12(h)(3). Federal jurisdiction requires a federal question, 28 U.S.C. § 1331, or diversity of citizenship in a case arising under state law in which the amount in controversy exceeds \$75,000, *id.* § 1332. Plaintiff has not alleged a violation of her rights under federal law. And she has not pleaded diversity of citizenship. Indeed, her complaint lists New York addresses for both parties. *See* Compl. at 2-3.

Plaintiff is advised that, in addition to establishing subject-matter jurisdiction, any amended complaint must comply with the requirement of Rule 8(a) of the Federal Rules of Civil Procedure that the complaint contain “a demand for the relief sought.” Plaintiff’s complaint does not articulate a request for relief.

Lastly, any amended complaint plaintiff files on her own behalf must be accompanied by an affirmation that plaintiff is at least eighteen years old. Plaintiff asserted she was “a minor student” in her application to proceed *in forma pauperis*, *see* Mot. for Leave to Proceed in Forma Pauperis at 1 (Dkt. #2), but “[a] minor . . . normally lacks the capacity to bring suit for [her]self,” *Berrios v. New York City Hous. Auth.*, 564 F.3d 130, 134 (2d Cir. 2009); *see* N.Y. C.P.L.R. § 1201 (stating that an “infant” cannot appear on her own behalf); Fed. R. Civ. P. 17(b)(1) (stating that an individual capacity to sue is determined “by the law of the individual’s domicile.”). Accordingly, if plaintiff seeks to proceed *pro se* on an amended complaint, she must affirm on the record that she is at least eighteen years old.

CONCLUSION

Plaintiff’s complaint is dismissed without prejudice. The Court grants plaintiff thirty days to file an amended complaint that conforms with Rule 8(a) of the Federal Rules of Civil Procedure and provides a basis for subject matter jurisdiction. Any amended complaint must be captioned “Amended Complaint,” and bear the same docket number as this order. Plaintiff is advised that any amended complaint will completely replace, not supplement, her prior pleading. Further proceedings are stayed for 30 days. If plaintiff does not file an amended complaint within the time allotted, judgment will enter dismissing this action without prejudice. Although Plaintiff paid the filing fee to commence this action, the Court certifies pursuant to 28 U.S.C. § 1915(a)(3) that any appeal would not be taken in good faith and therefore *in forma pauperis* status is denied for purpose

of an appeal. *See Coppedge v. United States*, 369 U.S. 438, 444-45 (1962).

SO ORDERED.

/s/ Rachel Kovner
RACHEL P. KOVNER
United States District Judge

Dated: July 15, 2021
Brooklyn, New York